

State of South Dakota

NINETIETH SESSION LEGISLATIVE ASSEMBLY, 2015

594W0014

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to establish a wine direct shipment license and wine carrier
2 license to enable the direct shipments of certain wine in South Dakota.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Common carrier," a carrier which holds itself out to the general public as engaged
6 in the business of transporting goods for a fee;
- 7 (2) "Department," the South Dakota Department of Revenue;
- 8 (3) "Direct shipper," a winery that has obtained a wine direct shipper license;
- 9 (4) "Purchase price," the price of a product charged to the end consumer before the
10 application of South Dakota state and local taxes;
- 11 (5) "Wine carrier," a common carrier that has obtained a wine carrier license;
- 12 (6) "Winery," a winery that produces its own wine and holds a federal basic wine
13 manufacturing permit.

14 Section 2. Any winery located within or outside of the state may obtain a wine direct shipper
15 license. An applicant for an initial or renewal wine direct shipper license shall:

- 16 (1) File an application with the department on a form prescribed by the department;



- 1 (2) Pay a license fee of one hundred dollars;
- 2 (3) Submit a copy of the applicant's current federal basic wine manufacturing permit;
- 3 (4) Register each brand label offered for sale in this state, if not previously registered,
- 4 and pay all applicable brand registration fees pursuant to chapter 39-13;
- 5 (5) Hold a South Dakota sales and use tax license issued by the department; and
- 6 (6) Be current on the remittance of all applicable state and local taxes.

7 The department shall issue a wine direct shipper license to any applicant who meets the
8 requirements of this section and this Act.

9 Section 3. Any common carrier may apply for a wine carrier license. An applicant for an
10 initial or renewal wine carrier license shall:

- 11 (1) File an application with the department on a form prescribed by the department;
- 12 (2) Pay a license fee of one hundred dollars.

13 The department shall issue a wine carrier license to any applicant who meets the
14 requirements of this section and this Act. Any money collected pursuant to this section shall be
15 deposited in the general fund.

16 Section 4. Wine direct shipper licenses and wine carrier licenses are valid from twelve
17 o'clock midnight on the thirty-first day of December to twelve o'clock midnight on the thirty-
18 first day of the next December. However, the licenses are valid for an additional three days if
19 a proper application for a new license is in the possession of the department before midnight on
20 the thirty-first day of December when the license expires. The full fee shall be charged for any
21 license for a portion of the period.

22 Section 5. Notwithstanding any other provisions of Title 35, a direct shipper licensed
23 pursuant to this Act may sell and ship wine to any person in this state who is twenty-one years
24 of age or older if the wine is registered for direct shipment as required by section 2 of this Act.

1 Before shipping the wine, the direct shipper shall verify the age of the person placing the order
2 by obtaining a copy of the person's valid age-bearing photo identification document issued by
3 this state, another state, or the federal government, or by using an age verification service. The
4 direct shipper shall record the name, address, date of birth, and telephone number of the person
5 placing the order on the order form or other verifiable record. The direct shipper shall notify the
6 person placing the order that the recipient of the shipment will be required to show a valid age-
7 bearing photo identification document issued by this state, another state, or the federal
8 government upon delivery. No direct shipper may ship more than twelve cases of wine,
9 containing no more than nine liters per case, in any calendar year to any person for personal use
10 under this Act.

11 Section 6. A direct shipper shall label each package to be shipped in accordance with this
12 Act so that it conspicuously contains words indicating the package contains alcohol and that the
13 signature of a person twenty-one years of age or older is required for delivery. Any direct
14 shipper who causes a direct shipment of wine in violation of section 5 of this Act or this section
15 is subject to a civil penalty of one thousand dollars for a first offense and two thousand dollars
16 for a second or subsequent offense. Penalties may be levied by the Department of Revenue. Any
17 money collected pursuant to this section shall be deposited in the general fund.

18 Section 7. Each shipment of wine made in accordance with this Act shall be delivered by
19 a wine carrier and shall be accompanied by a shipping label that conforms to the requirements
20 contained in section 6 of this Act. The wine carrier shall obtain the signature of a person twenty-
21 one years of age or older prior to delivery of the shipment, and shall request that the person
22 signing for the shipment display a valid age-bearing photo identification document issued by
23 this state, another state, or the federal government verifying that the person is twenty-one years
24 of age or older.

Any common carrier or wine carrier who delivers wine to a person under twenty-one years of age is subject to a civil penalty of one thousand dollars for a first offense and two thousand dollars for a second or subsequent offense. Any money collected pursuant to this section shall be deposited in the general fund.

Section 8. That § 35-9-1.2 be amended to read as follows:

35-9-1.2. Any person charged with a violation of § 35-9-1~~or~~, 35-9-1.1, or section 7 of this Act, may offer evidence, as a defense, that the person made a reasonable attempt to investigate the age of the person by examining an age-bearing identification document that would have appeared valid to a reasonable and prudent person.

Section 9. No person may receive more than twelve cases of wine, containing no more than nine liters per case, in any calendar year for personal use under this Act. No person who receives wine under this Act may resell any of the wine. It is a Class 2 misdemeanor for any person to receive more than twelve cases of wine during a calendar year in violation of this Act. It is a Class 1 misdemeanor for any person to resell or attempt to resell any wine obtained pursuant to this Act.

Section 10. A direct shipper may only ship wine that was produced by the direct shipper in accordance with the direct shipper's federal basic wine manufacturing permit. A violation of this section is a Class 2 misdemeanor.

Section 11. A direct shipper is deemed to have consented to the jurisdiction of the department and the courts of the state of South Dakota with respect to the enforcement of this Act. The direct shipper shall allow the department to perform an audit of the direct shipper's records, including any documents used to verify the age of any person ordering wine from the direct shipper and provide copies of any such records upon request.

Section 12. A direct shipper shall file quarterly reports with the department on or before the

1 fifteenth day of the month following each quarterly period. The required quarterly report shall
2 be filed even if no business was transacted in this state during the reporting period.

3 The report shall include:

- 4 (1) The business name, address, and direct shipper license number of the direct shipper;
- 5 (2) The total gallons of wine shipped to recipients in this state during the quarterly
6 period;
- 7 (3) The name and address of shipment recipients in this state and the number of cases,
8 or portions thereof, received per recipient during the quarterly period;
- 9 (4) The wine carrier or carriers used to deliver each shipment; and
- 10 (5) The date, wine type, brand label, quantity, and purchase price of each shipment,
11 along with any taxes paid by the purchaser, during the quarterly period.

12 Section 13. A wine carrier shall file quarterly reports with the department on or before the
13 fifteenth day of the month following each quarterly period. The required quarterly report shall
14 be filed even if no business was transacted in this state during the reporting period.

15 The report shall include:

- 16 (1) The business name and address of the direct shipper for each shipment;
- 17 (2) The date of shipment;
- 18 (3) The name and address of shipment recipients in this state; and
- 19 (4) The weight in pounds of each package shipped.

20 Section 14. A direct shipper shall pay the alcoholic beverage occupational taxes as
21 prescribed by § 35-5-2, according to the rates established in subdivisions 35-5-3(2), (3), and (4).
22 Notwithstanding the filing and payment requirements prescribed in chapter 35-5, a direct
23 shipper shall include on the report required by section 12 of this Act the gallons of wine shipped
24 to recipients in this state in each wine category as set forth in subdivisions 35-5-3(2), (3), and

1 (4), and calculate the tax due for each wine category.

2 Additionally, the direct shipper shall pay the tax imposed by § 35-5-6.1 on shipped wine
3 based upon the purchase price of the wine sold to the consumer. The direct shipper shall remit
4 the taxes quarterly on or before the fifteenth day of the month following each quarterly period.

5 A direct shipper that is also licensed as a farm winery pursuant to chapter 35-12 shall receive
6 a credit for any occupational tax paid pursuant to §§ 35-12-7 and 35-12-8 for any wine sold for
7 shipment in this state by the direct shipper.

8 Section 15. All reports required by sections 12 and 13 of this Act shall be submitted by
9 electronic means to the department. All taxes required to be remitted by section 14 of this Act
10 shall be remitted by electronic transfer to the department.

11 Section 16. Any sale and shipment of wine directly to a person in this state from a winery
12 that does not hold a current wine direct shipper license is prohibited. For the first offense, the
13 department shall send a certified letter to any person who violates this section and order the
14 person to cease and desist any shipment of wine into this state. For any subsequent violation,
15 the department shall notify the alcoholic beverage control agency in the person's state of
16 domicile, if other than this state, and the Alcohol and Tobacco Tax and Trade Bureau of the
17 United States Department of the Treasury of the violation. Any person who violates this section
18 is subject to a civil penalty of up to five thousand dollars. Any money collected pursuant to this
19 section shall be deposited in the general fund.

20 Section 17. The department may promulgate rules, pursuant to chapter 1-26, concerning:

- 21 (1) Forms necessary for the implementation of this Act;
22 (2) Reporting and tracking requirements for wine direct shipper licensees; and
23 (3) The procedure for filing tax returns and the payment of all applicable taxes.

24 Section 18. The department shall compile and publish on its internet website a list of wine

1 labels registered for sale and shipped in the state each quarter, based on information reported
2 in section 12 of this Act. The list shall include:

- 3 (1) The manufacturer's name and address;
- 4 (2) Each brand label shipped by the manufacturer; and
- 5 (3) Whether the manufacturer shipped the brand label to any consumer.

6 Section 19. That § 35-12A-1 be amended to read as follows:

7 35-12A-1. Notwithstanding any other provision of law, any person who is at least
8 twenty-one years of age may purchase and receive wine from another state as provided in this
9 section if the wine is not in distribution in this state ~~and the wine comes from a winery that is~~
10 ~~located in a state that affords South Dakota wineries an equal reciprocal shipping privilege, or~~
11 ~~a winery located in South Dakota.~~ The person ~~shall~~ may place an order with a licensee as
12 defined in subdivision 35-4-2(3) ~~or, (5), or (12).~~ The licensee shall order the wine through a
13 wholesaler licensed pursuant to subdivision 35-4-2(2) and the wholesaler shall arrange the
14 purchase of wine. The licensee shall inform the purchaser of the cost of the wine, the amount
15 of any tax that would apply to the purchase pursuant to § 35-5-3, the amount of sales tax that
16 would apply, and the amount of charges for freight and handling. The licensee shall collect the
17 total amount due from the customer before ordering the wine through the wholesaler. After
18 receiving the order for the wine from the licensed retailer the wholesaler shall arrange for the
19 wine to be shipped directly to the licensee who placed the order for the purchaser. Wine
20 purchased pursuant to this chapter may only be delivered and received by the purchaser from
21 a licensee as defined in subdivision 35-4-2(3) ~~or, (5), or (12).~~

22 Section 20. That § 35-12A-2 be amended to read as follows:

23 35-12A-2. If the wholesaler orders twelve or less cases of a particular brand of wine for an
24 individual purchaser in one calendar year pursuant to this ~~section~~ chapter, no registration fee

1 pursuant to chapter 39-13 may be imposed.

2 Section 21. That § 35-12A-4 be repealed.

3 ~~35-12A-4. Any licensee who holds a farm winery license pursuant to § 35-12-2 may ship~~
4 ~~no more than twelve cases of wine per person per calendar year. A case may contain no more~~
5 ~~than nine liters per case in any one shipment. Any wine sold may only be for personal use and~~
6 ~~not for resale. The wine may only be sold directly to a resident of another state if the state to~~
7 ~~which the wine is sent allows residents of the state to receive wine sent from outside that state.~~

8 Section 22. That § 35-12A-5 be repealed.

9 ~~35-12A-5. No person in the business of selling alcoholic beverages may ship or cause to be~~
10 ~~shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued~~
11 ~~pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any~~
12 ~~person who violates this section and order such person to cease and desist any shipments of~~
13 ~~alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a~~
14 ~~Class 1 misdemeanor.~~

15 Section 23. That § 37-10A-1 be amended to read as follows:

16 37-10A-1. Alcoholic beverages may not be sold below the wholesale cost of such alcoholic
17 beverages, unless the sale constitutes the termination of the sale of the alcoholic beverage on
18 the licensed premises. Alcoholic beverages offered for sale at less than wholesale cost may not
19 be offered again for sale on the licensed premises for a period of less than one year after
20 termination of the sale of said product on the licensed premises. Wholesale cost is the
21 consideration paid by a retailer to a wholesaler to acquire alcoholic beverages and includes but
22 is not limited to the purchase price and freight charges. If no wholesaler is used in the sale, the
23 direct shipper may not sell the alcoholic beverage below the manufacturer's cost.

24 Section 24. That § 35-2-21 be amended to read as follows:

35-2-21. If a violation is established in any proceeding under this title ~~a violation is established~~ or § 37-10A-1, but the secretary is satisfied that the nature and the circumstances of the violation were such that a suspension of the license would be adequate, the secretary may, instead of revoking the license, suspend it for a period not exceeding sixty days. The suspension is effective twenty-four hours after service of notice of the suspension upon the licensee. During the period of the suspension, the licensee may not exercise any rights or privileges under the license. The secretary may, in lieu of suspending or revoking the license, accept a monetary offer in compromise in settlement of any proceeding under this title. The amount of the offer in compromise may not exceed seventy-five thousand dollars. The secretary may also recover the actual costs of investigation and prosecution.

Section 25. That § 35-2-10 be amended to read as follows:

35-2-10. The secretary, in compliance with chapter 1-26, may revoke or suspend any license issued under this title upon proof of violation by the licensee, by the licensee's agents or employees, or by the manager or contractual operators of retail establishments and their agents or employees operating under a county or municipal license, of any of the following:

- (1) Any provision of this title or § 37-10A-1;
- (2) Any rule promulgated pursuant to this title; or
- (3) Any ordinance or regulation relevant to alcoholic beverage control that has been adopted by the political subdivision issuing the license.

For any licensee with multiple alcoholic beverage licenses for the same premises, upon suspension or revocation of any license pursuant to this title, the licensee shall cease operation under all alcoholic beverage licenses held by the licensee for the same premises for the same period as the suspension or revocation.

Section 26. The effective date of this Act is January 1, 2016.